

OPINION AND AWARD

OF

DAVID S. PAULL

**In the Matter of the Arbitration Between
International Union of Operating Engineers,
Local Union No. 70**

AND

**Independent School District No. 622
North St. Paul-Maplewood-Oakdale**

(Allyson J. Medin, Grievant)

Issued January 19, 2007
BMS Case No. 07-PA-0075

OPINION

Preliminary Matters

The Arbitrator was selected by mutual agreement from a list provided by the Minnesota Bureau of Mediation Services. The International Union of Operating Engineers, Local No. 70 (Union) is represented by Kelly A. Jeanetta, attorney at law, Minneapolis, Minnesota. Independent School District No. 622 of North St. Paul, Minnesota (District) is represented by Karen R. Kepple, attorney at law, White Bear Lake, Minnesota.

A hearing was conducted in North St. Paul, Minnesota, on Wednesday, November 29, 2006. At the hearing, the testimony of witnesses was taken under oath and the parties presented documentary evidence. No court reporter was present. The Arbitrator tape-recorded the proceedings to supplement personal notes. After the witnesses were heard and the exhibits were presented, the parties submitted written closing statements. The written closing statements were received in a timely manner. Thereafter, the grievance was deemed submitted and the record closed.

Issue

Because the parties view this dispute in fundamentally different ways, it was not possible for them to arrive at a mutually agreeable statement of the issue. The Union contends the District's action against Ms. Medin was disciplinary in nature. Therefore, the Union proposes that the issue be stated as follows:

Did the District remove the Grievant from driving duties on May 26, 2006, for just cause, and if not, what is the appropriate remedy?

The District takes the position that the employment action that has become the subject of this grievance is justified by contract provisions that are not concerned with the subject of discipline. Correspondingly, the District considers this dispute as being non-disciplinary in nature. The District proposes the following statement of the issue:

Did the District properly remove the Grievant from driving duties on May 26, 2006, and if not, what is the appropriate remedy?

Neither party raised a procedural issue for resolution.

Relevant Contract Provisions

ARTICLE IV SCHOOL BOARD RIGHTS

Section 1. Inherent Managerial: The Exclusive representative recognizes that the School Board is not required to meet and negotiate on matters of inherent managerial policy which include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure and selection and direction and number of personnel, and all management rights and management functions not expressly delegated in this Agreement are reserved to the School Board.

ARTICLE XII VACANCIES AND JOB POSTINGS

Section 6. Promotion:

Subd. 1. In filling positions involving a promotion as defined in Section 5 above, the position shall be filled by the School District with the qualified candidate. Relevant qualifications needed for a position shall be determined by the School District. In making the determination as to who is the qualified candidate, the School Board shall consider the employees qualifications, aptitude for the position and his/her length of service with the School District, along with other relevant factors. If the School District changes qualifications for promotions, it will be the School District's responsibility to give advance noticed to the Union.

ARTICLE XIV DISCIPLINE DISCHARGE AND PROBATIONARY PERIOD

Section 4. Completion of Probationary Period: An employee who has completed the probationary period may be suspended without pay, discharged, or disciplined only for cause. An employee who has completed the probationary period and is suspended without pay, discharged or otherwise disciplined shall have access to the grievance procedure.

Summary of Relevant Facts

The Parties

The District is approximately 36 square miles in size, covering parts of Ramsey and Washington counties in the state of Minnesota. Seventeen separate schools are operated by the District, including nine elementary schools, three middle schools, three alternative and special education facilities and two high schools. About 11,000 students attend school within the District. There are approximately 170 employees in the bargaining unit.

The Union is the exclusive representative for purposes of collective bargaining for persons employed in approximately 25 separate job classifications. The Union and the District are signatory to a collective bargaining agreement effective for the period beginning July 1, 2003 and ending June 30, 2005 (CBA). The parties agree that the CBA applies to the grievance.

The Grievant, Allyson J. Medin, has been employed by the District for about ten years. Prior to the action that gave rise to this dispute, Ms. Medin functioned as a full time bus driver/custodian. In that capacity, she drove approximately 100-200 miles per day, five days a week. For the last few years, Ms. Medin has served as a “relief driver,” substituting for drivers who are absent due to illness or other reasons.

There was testimony that the duties of a relief driver are somewhat more demanding than for those drivers operating regular routes. For the relief driver, routes

and ridership are in a state of constant change. There was testimony that relief drivers have an opportunity to work some overtime hours in each pay period.

There was no evidence that Ms. Medin had been disciplined by the District during the term of her employment. Patty Reed, the District's Transportation Supervisor, testified that prior to the event that is the subject of this grievance, she considered Ms. Medin one of the District's best drivers. No employee evaluations of Ms. Medin's work performance were offered as evidence by either party. The record does contain a letter of commendation written by a member of the high school swim team, dated January 18, 2003.

There are two accidents on Ms. Medin's record. The first occurred February 2, 2005. The second, the accident that gives rise to this dispute, took place on May 16, 2006.

After the accident on May 16, 2006, Ms. Medin was reassigned to a custodian job classification. Ms. Medin's wage rate in the position of custodian is the same as she received as a relief bus driver. Since June of 2006, Ms. Medin has been on leave due to a work related injury.

The Events of May 16, 2006

At 4:30 on the afternoon of Tuesday, May 16, 2006, Ms. Medin was operating her assigned school bus in the City of North St. Paul. She was traveling northwest on 10th Avenue near the point at which that road intersects with Henry Street and 7th Avenue. Ms. Medin testified that she stopped at the intersection of 10th Avenue and Henry Street,

looked both ways, and then proceeded right on to Henry Street, stopping at the stop sign. According to Ms. Medin, she then proceeded out onto 7th Avenue, after again looking both ways. As she moved onto 7th Avenue, the vehicle she was operating collided with an automobile heading southwest on 7th Avenue, seriously damaging the left side. At the time of the accident, Ms. Medin was driving toward the bus terminal and no students were on board the bus.

The driver of the automobile was injured and hospitalized. According to the testimony, the insurance company has set aside a reserve of \$26,000 to settle the claim filed by him. The District spent approximately \$4800 to repair the school bus.

Ms. Medin candidly admitted that she caused the mishap. “I hit him,” she testified. However, Ms. Medin seemed less sure as to how the accident happened. In retrospect, she offered several theories. First, she proposed that the automobile was in a blind spot. She also theorized that the driver of the automobile had been drinking at the American Legion hall located down the block and had suddenly accelerated from the parking lot. Ms. Medin admitted that she did not know exactly how the accident happened and that she thought of these possibilities after the collision.

The bus was given a “post crash” examination by the District. According to the final report, the bus had several minor defects, including an inoperable front light, inoperable back up lights and a brake hose that was found to be “chaffing.” It was also determined that a brake mechanism on the right side of the vehicle was out of adjustment. These defects were corrected and the bus was returned to service.

Post Accident Events

Ms. Medin contacted the District by radio after the collision to report the incident. Ms. Reed appeared at the scene shortly thereafter. Once at the scene, Ms. Reed conducted an investigation of the incident.

Later that evening, Ms. Reed and Ms. Medin met in Ms. Reed's office. They discussed the incident and, by using her computer, Ms. Reed was able to access the driving record of the person operating the automobile.

A copy of a newspaper article concerning the event was offered by the Union. In this article, published on May 24, 2006, several statements were attributed to Ms. Reed by the reporter. According to the article, Ms. Reed said that Ms. Medin had a "clean driving record with the district" and that several witnesses observed Ms. Medin looking both ways prior to impact. Ms. Reed is directly quoted as saying "Basically, the car was in her blind spot." The article further reported Ms. Reed confirming that "Witnesses said she stopped at the stop sign and looked both ways."

Several statements regarding District employment policy appeared in the article. The article reported Ms. Reed's remark that traffic citations are recorded by the District and that "we have to take disciplinary actions because she was at fault."

At the hearing, however, Ms. Reed denied making several of the statements reported in the article. For example, Ms. Reed denied telling the reporter that "the car was in her blind spot." She further denied make the statement, as reported, that "we have to take disciplinary actions because she was at fault."

The District's Response to the Accident

The District took no immediate action against Ms. Medin. On Thursday, May 18, 2006, Ms. Medin returned to work and to her duties as a bus driver. She drove all her assigned routes on that day, as she did the next day, Friday, May 19, 2006.

On Monday, May 22, 2006, Ms. Reed reviewed the police report. She telephoned Ms. Medin and advised her that she was being placed on paid suspension pending the completion of the investigation. Ms. Medin's driving position was posted by the District on Wednesday, May 24, 2006. There was testimony that several unsuccessful efforts were made to contact Ms. Medin before the job was posted.

Ms. Reed successfully contacted Ms. Medin on Tuesday, May 25, 2006. In a letter dated that day, Ms. Reed advised Ms. Medin of the District's intent to "remove you from your position of Full-Time Driver/Custodian effective May 26, 2006 due to safety concerns." Ms. Reed's letter referred to Ms. Medin's first accident on February 2, 2005, further stating that "Police Reports show that both accidents could have been prevented." A grievance was filed by the Union later that day.

Julie Moeckly, the District's Human Resources Specialist responded to the grievance by letter dated June 26, 2006. In this letter, Ms. Moeckly stated the District's position, that the accident "was the result of inattentive driving and qualifies as a major moving violation as noted in the Driver's Handbook."

The grievance was next considered by District Superintendent Patty Phillips. Superintendent Phillips denied the grievance by letter dated July 21, 2006. While she recognized Ms. Medin's "longevity of service and the circumstances surrounding her first

accident,” Superintendent Phillips determined that “as an organization responsible for the safety of children, we cannot allow Ms. Medin to continue driving.” The letter further noted Ms. Medin’s traffic citation and the fact that the driver of the automobile had been injured. Superintendent also referred to the “Transportation Employee Handbook” section on “Major violations (Inattentive driving, speeding, and reckless driving).” Superintendent Phillips restated the District’s position, that the event constituted "a major violation,” as stated in the handbook. The letter closed with reference to Ms. Medin’s request to return to bus driving duties. Superintendent stated that this request could not be complied with, since student safety was of “primary concern.”

At the hearing, Superintendent Phillips supplemented her letter by stating her concern that Ms. Medin did not demonstrate that she was willing to take measures to improve her driving.

Ms. Medin appeared in court in response to the traffic citation on July 27, 2006, six days after Superintendent Phillips’ final response. The court determined that she failed to “yield” to a motorist with the right of way. She paid a fine.

Transportation Employee Handbook

The Transportation Employee Handbook (Handbook) contains several provisions relating to the continuing qualifications of District bus drivers. In this regard, the Handbook provides in pertinent part as follows:

A. Employees and Outside Applicants

3. After employment by the School District as a school bus driver, an employee shall be removed from driving a school bus if he/she receives three moving violation [sic] on their driving record, or if he/she receives a major violation on their driving record. A major violation shall be defined as careless driving, reckless driving, or DWI and DUI, or illegal substances. Failure to report for a random drug and/or alcohol test or a positive drug or alcohol test will result in disciplinary action up to and including termination of employment with the School District.

4. Any conviction for a moving violation involving major violations (inattentive driving, speeding, and reckless driving) while operating a School District Bus will result in immediate removal of driving duties. Prior to conviction, the School District may place an individual into a non-safety sensitive position pending the outcome of the moving violation. Upon conviction, an employee may use the bumping process identified in the collective bargain agreement.

B. Full Time Employees

1. Full Time Employees who bid into a School District Bus Driving Position shall comply with section "A" above except that a current Full Time Employee may drive a School District Bus with one minor driving violation on their driving record.

2. Full Time Employees with two violations, minor in nature, on their driving record will not be allowed to drive a School District Bus without first submitting their record to the School District Insurance Company for an office determination of the individuals [sic] insurability. (emphasis original)

According to the record, the District's insurance carrier is still willing to insure Ms. Medin as a driver, despite the accident and Ms. Medin's conviction for "Failure to Yield." Ms. Reed testified that the District does not consider the Handbook to be binding or a limit on its activities, but was more of a guideline.

Accident Review

The Handbook refers to an “Accident Review Committee (ARC).” The purpose of the ARC, according to the Handbook, is to review a bus accident and determine whether it was preventable or non-preventable. The Handbook specifically states that “fault” is not to be determined by the ARC. The ARC consists of the Transportation Supervisor, the Driver Trainer and two drivers selected “at random.” The Handbook states that “All drivers will be notified in writing of the committee’s decision” and that a copy of the final report “will also go into the drivers [sic] personnel file.”

On June 30, 2006, an ARC was convened to review Ms. Medin’s accident of May 16, 2006. This particular ARC consisted of Ms. Reed, in her capacity as the Transportation Supervisor, Andrew J. Friendt, the District’s Driver Trainer and a rank and file bus driver, Craig Goodwin. All three agreed the accident was preventable. None of the ARC members found that Ms. Medin’s view had been obstructed by a blind spot.

Driver Trainer Friendt testified that, in his opinion, Ms. Medin should not be driving. He recalled telling Ms. Medin on a previous occasion that she sometimes appeared to be distracted while driving. He also told Ms. Medin that she accelerated too rapidly at times and braked too hard when approaching stop signs or lights. He also testified of his view that Ms. Medin would benefit from retraining.

Ms. Medin's Accident of February 2, 2005

According to the record, on February 2, 2005, at about 11:47 a.m., Ms. Medin was operating a District School bus on an entry ramp merging toward the Lafayette Bridge and State Highway 52. Traffic was moving slowly. Ms. Medin checked her side and overhead mirrors in preparation for the merge. The automobile immediately in front of her stopped suddenly. When she saw the car stop, Ms. Medin tried to brake the bus. However, she was unable to do so and there was a collision.

The police report indicated "No Violations Were Discovered" and Ms. Medin was not issued a citation in connection with the incident. No Accident Review Committee was convened to determine whether the accident was preventable. Ms. Medin testified that she was told by her supervisor that she had handled the situation satisfactorily.

District Action Involving Other Drivers

Through several witnesses, the parties examined the District's actions relating to several other bus drivers, all of whom had encountered problems while driving a school bus.

The Union referred to Charles Marcellus. Similar to Ms. Medin, Mr. Marcellus was involved in a traffic accident and was cited for failure to yield. Mr. Marcellus is currently driving a school bus for the District. The District pointed out that Mr. Marcellus' accident involved no injuries and only minor damage.

The Union referred to David Kenan, who was charged with “illegal change of course” in connection with an accident in which he collided with another vehicle. According to the evidence, this accident was the fifth attributed to Mr. Kenan. Mr. Kenan continues to drive District buses. In the opinion of the District, all of Mr. Kenan’s accidents were “minor,” except for the incident involving the citation.

The Union referred to Robert Brisbin because he was issued a citation for inattentive driving in connection with a rear-end collision. Mr. Brisbin continues to act as a District bus driver. The District took the position that Mr. Brisbin is not a “regular” driver and is called upon “only as needed.”

The Union raised the accident record of Daniel Clark. The records show that Mr. Clark was involved in three accidents and several other safety-related incidents. He was eventually terminated as a District bus driver. The Union noted that Mr. Clark was given the opportunity to retrain prior to the discharge.

Positions of the Parties

The District

The District first takes issue with the Union's claim that Ms. Medin was the subject of discipline. Ms. Medin was suspended with pay, the District points out. Referring to Article XIV, Section 4, the District asserts that suspension with pay is "not designated in the collective bargaining agreement as discipline."

The District maintains that the Union could have negotiated "the inclusion of suspension with pay in the definition of progressive discipline." The Union failed to bargain on this item, states the District and further did not "bargain for removal of bus driving duties and reassignment to a custodial position within the same bargaining unit as a part of the definition of progressive discipline." The District further notes that Ms. Medin "suffered" no loss of hourly pay. Any claim that the Grievant lost overtime pay, argues the District, is to speculative to consider.

The right to "enforce bus driving rules for safety, qualifications and removal from driving duties" is reserved in Article IV, Section 1, the District contends. The Union concedes this point, according to the District. "It is up to the School Board [,] not the Union [,] to determine whether an employee is qualified for a position and what those qualifications must be," the District maintains. Article XII, Section 6 is cited in further support of this position. Because the Union has not negotiated the specific basis for removal of driving duties, the District argues, such a decision is solely within the discretion of management.

Having taken the position that the action against Ms. Medin is independent of the disciplinary process, the District next contends that Ms. Medin was removed from driving duties pursuant to its practices and policies. The “Driver Qualifications” section of the Transportation Employee Handbook is referred to at subdivision A, paragraphs 3 and 4. The District “interprets these sections to include the Grievant’s conviction of Failure to Yield as a major moving violation.” The action taken, asserts the District, was based on the Failure To Yield conviction, the prior accident only 15 months earlier and the “progression of severity of these accidents.” The District argues that the action taken was the sound exercise of “common sense and good judgment.”

The District characterizes the Union’s position as incorrectly relying on the issuance of a citation as a deciding factor. Whether or not a citation is issued cannot be a controlling factor, argues the District, since standards vary depending on the jurisdiction and, in any event, such activity is not within the District’s control. “What is within its control,” observes the District, is the duty to “take action to ensure that students on its buses are safe.” The District lists the factors it does consider, including the number and nature of accidents or violations, the severity of damage, extent of injuries and proximity in time of the accident or violations.

The Union’s “claim” that Ms. Medin has been treated disparately when compared with other drivers is addressed by the District. To this, the District responds that other drivers have “faced something worse than reassignment from driving duties . . . disciplinary action in the form of discharge.” The District states that the action taken was in recognition of the length of service and work performance prior to February 2, 2005.

Further, argues the District, every accident is different and there is no “magic formula . . . The School District can only review each one and exercise sound judgment and fairness in deciding when enough is enough,” the District declares.

The District contends that all employees have been treated consistently on the basis of this standard, singling out several incidents “focused” on by the Union. The actions taken against all these employees, the District maintains, were the result of the consideration of the same factors, as previously listed. “In stark contrast to these examples, there is no employee or former employee who has had two at-fault accidents involving significant property damage, one of which also involved serious injuries, as well as, a citation that remains driving a school bus.”

The District next addresses the question of notice and proper warning. “The Grievant has been working as a bus driver at the School district long enough to know that other drivers have been terminated following serious accident or major moving violations,” the District offers. According to the District, Ms. Medin admitted as much. It is inappropriate, in the eyes of the District, for Ms. Medin to admit she knew she could lose her job and not be aware of the reassignment option. Referring to the testimony of Ms. Reed and Ms. Moeckly, the District asserts that Ms Medin “made numerous attempts to contact the Grievant,” but that she did not respond.

In conclusion, the District makes the following points:

- The action was the only responsible action possible, given the seriousness of the accident.

- The Union interprets the Transportation Employee Handbook to “narrowly and literally.”
- The District has the responsibility to assure that students are transported safely.
- The Grievant did not “show ownership” of her mistake or seek to make improvements.
- The record establishes that the accident was the result of the Grievant not paying proper attention.
- The grievant inappropriately referred to the victim’s poor driving record and the possibility that he had been drinking.

Considering all parties to have been fortunate that the damage in this case was not more serious, the District declares that it “cannot wait to see what happens next, just hoping for the best.” Thus, the District believes the grievance should be denied.

The Union

The Union contends that the action taken against Ms. Medin was discipline. Article XIV, Section 4 of the CBA is referred to, specifically the phrase “suspended without pay, discharged *or otherwise disciplined*.” Pursuant to the CBA, argues the Union, discipline “is not limited to just suspension without pay and discharge.” Any contrary construction would render the remainder of the paragraph superfluous, in the view of the Union. A dictionary definition of the term “discipline” is supplied in support, characterizing the term as implying “punishing or chastening in order to bring under

control.” With or without pay, the Union asserts, suspension “carries with it the banner of castigation . . . a form of personal censorship . . . to be returned to work but permanently banished from the primary duties of your job is nothing short of permanent blame and continued punishment.”

While Ms. Medin did not lose any base pay, the Union maintains, she did lose regular opportunities to work significant overtime. Regardless, the Union argues, economic impact is not required to conclude that the District’s action was disciplinary in nature. The Union makes comparison to warnings. “There is no negative economic impact attendant with a warning,” the Union points out, “yet warnings are considered disciplinary.” The Union also refers to the issue of work history and the recognition that the action will be necessarily noted on Ms. Medin’s employment record.

Having taken the position that the action was disciplinary in nature, the Union generally argues that no just cause was present to support the District’s action. First, the Union addresses the question of notice and warning. In this case, the Union asserts, Ms. Medin did not violate District rules and was treated disparately. Ms. Medin could not have known, the Union asserts, that she would be suspended and removed from driving due to two accidents and a failure to yield citation. To the Union, the District incorrectly concluded that the Grievant had two “preventable” accidents, because there had been no previous determination that the February 2005 accident was preventable. Further, the Union asserts, the District’s witnesses had difficulty defining a “preventable” accident and could not connect the concept to the question of driver “removability.”

Further, according to the Union, Ms. Medin could not have been on notice because she did not meet the District’s standards for removal, at least in the context of the

District's policy. Referring to the handbook, the Union asserts that Ms. Medin did not acquire three moving violations and did not have a "major" violation on her record. The Union further maintains that the label "inattentive driving" is not applicable, as Minnesota law defines this particular offense in terms of driving too fast. Failure to yield, the Union argues, is not related to the speed of the vehicle. The Union further argues that Ms. Medin is eligible to drive under District rules, because she has only one minor violation on her record and is insurable.

According to the Union, the District had ample opportunity to alert Ms. Medin that the 2005 accident would be considered as grounds for removal, in addition to the 2006 occurrence. However, the Union states, the District took the position "for the very first time" that the 2005 accident was preventable and grounds for further action after the 2006 accident. The Union points out that the District had no basis to believe the accident was preventable, as no review board was convened. "The District knew perfectly well," declares the Union, [that] the February 2005 accident was anything but" preventable. The Union also suggests that the District's past actions regarding accidents did not provide a basis for notice on the part of Ms. Medin.

The Union criticizes the District's investigation of the accident. The District's transportation supervisor, the Union suggests, determined that the accident was Ms. Medin's fault, even before any investigation or internal accident review. In support of this proposition, the Union refers to a newspaper article quoting from the Transportation Supervisor. "The next day," asserts the Union, "the District announced its decision to permanently banish Ms. Medin from her driving duties," without an investigation or

accident review. When the incident was finally reviewed by the Accident Committee, the Union declares, the grievance had already been denied.

Further, contends the Union, the accident review process was “faulty.” The Union argues that “only three of four committee members conducted the review” and the review itself was perfunctory. For example, the Union asserts, the committee “gave no indication” that they were aware of the actual routes taken by Ms. Medin. The finding that “there were no blind spots” is also questionable, argues the Union. “All buses have blind spots,” contends the Union. Further, argues the Union, the Committee did not consider a report that the brakes needed adjustment and the effect of the rain on events.

The Union takes the position that the District “did not apply the rules in a consistent fashion.” The Union refers to “other drivers” who were permitted to continue driving after numerous accidents, after a citation for failure to yield, after a citation for “inattentive driving and an illegal change of course charge.”

Finally, the Union takes the position that Ms. Medin was not treated properly given her excellent record, including the District’s “utter failure to engage in progressive discipline” as required by the contract. To the Union, the circumstances require the conclusion that the suspension and permanent removal from driving duties was unreasonable. The Union requests that the grievance be sustained and the Ms. Medin “be made whole in all respects.”

Discussion

Issue Resolution: Discipline or Reassignment

The first question to be resolved is the issue. Was the District's response to Ms. Medin's accident disciplinary in nature or an act of reassignment, pursuant to Article XII, Section 6?

The District takes the position that Ms. Medin was reassigned and not disciplined. Several reasons are offered in support. First, the District asserts that pursuant to Article XII, Section 6, it has the sole authority to determine the qualifications of each employee for any particular position. Second, the District contends that the economic impact of its decision in this case was minimal because Ms. Medin did not suffer a reduction in pay rate. The testimony concerning overtime opportunities is considered by the District to be too speculative to have any probative value. Further, the District maintains, the CBA does not specifically list suspension with pay as an item of discipline.

The Union argues that the action taken against Ms. Medin was indeed discipline. Article XIV, Section 4, clearly contemplates a suspension with pay as discipline, the Union asserts, because the provision specifically refers to any employee who is "suspended without pay, discharged or otherwise disciplined." To the Union, whether or not Ms. Medin actually suffered a reduction in pay is not pertinent. As the Union points out, warnings are generally considered disciplinary in nature, even where no negative economic consequences are present. Further, the Union urges that the effect of the action must be considered, as the District's action blemishes Ms. Medin's employment

record.

The Union also asks that the basic nature of the District's action be examined. As the Union suggests, the term "discipline" necessarily assumes a set of rules and a failure to comply with those rules. Both legal and non-legal dictionaries define "discipline" using terms such as correction, chastisement, punishment or penalty.

Despite the Union's strong arguments, both the CBA and the record in this case indicate that the District's action must be considered to be a contractual reassignment and not discipline. The Handbook does not appear to tie minor driving errors or petty traffic violations to a concept of discipline. There is no disciplinary penalty for substandard bus driving at this level. A driver who receives three moving violations, for example, is not disciplined but is "removed from driving a school bus." A bus driver who receives or is convicted of a "major violation" as defined in the Handbook, is not disciplined but is relieved of driving duties. The employee is specifically permitted to "use the bumping process" to bid other jobs.

The Handbook provides for only one exception. If a bus driver fails to "report for a random drug and/or alcohol test" or produces "a positive drug or alcohol test," that employee is subject to disciplinary action. However, this exception has no pertinence to this dispute. There is a clear distinction to be made between having an accident or violating a traffic law and having a problem with drugs or alcohol.

Pursuant to Article IV, Section 1 of the CBA, the District has retained the right to select employees and has reserved "all management rights and management functions not expressly delegated." There is no provision of the CBA that expressly addresses demotion or reassignment or modifies the District's reserved power. A number of

arbitrators have ruled that, unless modified by the collective bargaining agreement, the employer may demote or reassign employees, pursuant to authority provided by provisions very similar to Article IV, Section 1.

Compliance with Reassignment Standards

The right to demote is not without limitation, however. Many arbitration awards indicate that a demotion can be sustained only when there is sufficient evidence of a reasonable basis.

On this record, the reasonableness of the District's action in removing Ms. Medin from all future driving duties is called into question by several factors. The District did not follow its own rules when it used Ms. Medin's first accident as a basis for the demotion. Ms. Reed's letter refers to the accident as being "preventable" in nature. However, Ms. Medin was not issued a citation in connection with that accident. No ARC was convened. There is some evidence to indicate that the District advised Ms. Medin that she made no errors in driving, given the circumstances.

Most important, Ms. Medin was never advised that the 2005 accident had been determined a preventable one until she had the opportunity to review Ms. Reed's letter of May 25, 2006. The Handbook states that the ARC should meet at "such times as are necessary" to review an accident. If the District believed that Ms. Medin's driving was below standard on February 2, 2005, the proper action would have been to convene an ARC, establish a basis for the preventability determination and advise Ms. Medin of the result.

Similarly, Ms. Medin's driving record does not appear to meet the criteria for demotion from driving duties, as stated in the Handbook. Ms. Medin did not receive three moving violations. The citation she received for "Failure to Yield" is not a major violation, at least as defined by the Handbook. While Ms. Medin clearly made a mistake on May 16, there is no evidence that she was "inattentive." Ms. Medin testified that she looked both ways before entering the street where the collision occurred.

The District argues that, in order to protect the safety of students, care must be taken not to read the Handbook too "narrowly and literally." It is certainly the District's ultimate responsibility to make sure that students are transported safely. This is an argument that merits unqualified support.

The demotion might have been justified on grounds other than those existing in the Handbook, assuming such grounds existed. In this case, however, the District sought to support its action only for those reasons found in the Handbook. The documentary evidence in the case shows no other basis for the demotion, that is, independent of the grounds contained in the Handbook. For the reasons stated, these grounds were insufficient.

Ms. Medin is not unqualified to drive a school bus. Pursuant to the CBA, the District has the right to involuntarily reassign a bus driver on the basis of lack of qualifications, such as a license revocation or lack of insurability. However, Ms. Medin's license was not revoked and she is insurable.

Finally, there is reliable testimony indicating that Ms. Medin should be retrained before again driving a school bus.

Having carefully considered the record in this case, as well as the written positions of the parties, the Arbitrator agrees with the District that the issue in this case is whether the District properly removed the Grievant from driving duties on May 26, 2006. The Arbitrator further concludes that the District did not properly remove the Grievant from driving duties. Ms. Medin should be permitted to resume her duties as District bus driver, after she submits to standard retraining.

The grievance is therefore *SUSTAINED*.

A W A R D

1. **IT IS THE AWARD** of the Arbitrator that the District did not properly remove the Grievant from driving duties on May 26, 2006.
2. **IT IS THE ORDER** of the Arbitrator that the Grievant be permitted to resume her duties as a District bus driver after submitting to standard retraining, and that she be made whole for any lost wages or benefits.

January 19, 2007
St. Paul, Minnesota

David S. Paull, Arbitrator